

Request for Reconsideration dated April 11, 2006

Reply to Office action dated December 5, 2005

concerns a dairy product containing a water-soluble source of vitamin E that includes milk and a polyethylene glycol ester of *d,l*- or *d*- α -tocopheryl succinate.

Applicant respectfully submits that the combined teachings of the above cited art fail to teach or fairly suggest each feature of the claimed invention. The office action concedes that Lambert fails to teach the use of TPGS in a beverage as well as the claimed tocopherol amounts. The office action also concedes Lambert fails to disclose a fruit juice beverage, a fruit flavoring, sweeteners, or a dairy product. The office action cites Skeffington for purportedly teaching the above features not disclosed in Lambert. However, Applicant respectfully disagrees.

Skeffington describes pharmaceutical formulations that include water soluble Vitamin E. As explained on page 2, lines 9-12, Skeffington is concerned with making TPGS containing pharmaceutical formulations that include preservatives such that the resulting formulation has a shelf life "suitable for its intended use." To achieve such a formulation, Skeffington employs a preservative system that includes, for example, potassium sorbate, probyl paraben, methyl paraben, EDTA and/or propylene glycol. Skeffington also employs citric acid and sodium citrate as a buffering system. See Page 13, Line 11 through Page 14, Line 10. Unlike the present invention, however, Skeffington fails to teach or fairly suggest a beverage that includes a sweetener (as recited in claims 1 and 34); a flavoring agent (as recited in claims 1, 12, 23, and 34); fruit juice (as recited in claim 12); carbonated water (as recited in claim 23); or milk (as recited in claim 38). Applicant notes the office action's assertion that Skeffington discloses such features and points to claim 6, claim 38, page 3, lines 1-35, page 7, lines 20-30, and page 16, lines 1-11 in Skeffington as disclosing the above noted features. However, claim 6 states a specific range of one of the preservatives. Since, Skeffington only includes 18 claims, claim 38 does not exist. Page 3 of Skeffington discloses two formulations that include only the Vitamin E, the preservatives, the buffering system, and distilled water. Page 7 shows the antibacterial effects of the formulations. Furthermore, page 16 includes claims 1-5, none of which list any of the ingredients of the presently claimed invention discussed above. In short, Applicant respectfully

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submits, for at least the above reasons, the combined teaching of Lambert and Skeffington fail to teach or fairly suggest each and every feature of the claimed invention.

Krasavage, Traber, and Argao all fail to remedy the deficiencies discussed above with respect to Lambert and Skeffington. Krasavage is concerned with studying the toxicity of TPGS on rats. Traber and Argao are concerned with producing a medicinal formulation that includes Vitamin E which can be administered orally for the treatment of cholestasis. Traber's formulations include tocopheryl acetate, polysorbate, MCT oil and water. Argao teaches administering Vitamin D₃ or a combination of Vitamin D₃ with TPGS. See abstract. None of these three documents teach or fairly suggest a beverage that includes a sweetener, a flavoring agent, fruit juice, carbonated water or milk. Moreover, there is nothing in the combined teachings of all of all of the cited documents which would have motivated one of ordinary skill in the art to produce a Vitamin E containing beverage having the above listed ingredients. Hence, the combined teachings of the listed documents fail to render the claimed invention obvious.

In view of the above remarks, Applicant submits this rejection is overcome and respectfully requests it be withdrawn.

In summary, Applicant believes the application to be in condition for allowance. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection and pass the application to issuance.

Respectfully submitted,


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April 11, 2006
Date

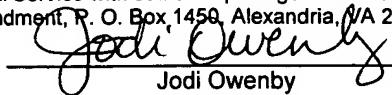
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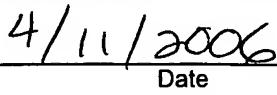
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Jodi Owenby



Date